

E-FILED on 2/7/13

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HOLOGIC, INC. CYTYC CORPORATION
and HOLOGIC L.P.,

Plaintiffs,

v.

SENORX, INC.,

Defendant.

No. C-08-0133 RMW

**ORDER DENYING-IN-PART AND
GRANTING-IN-PART PLAINTIFFS'
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL PORTIONS OF
PLAINTIFFS' OPPOSITION AND
EXHIBITS IN SUPPORT OF
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

[Re: Dkt. No. 530]

Plaintiffs moved to file under seal portions of plaintiffs' opposition and exhibits to the Declaration of Maulik Shah in support of plaintiffs' opposition to defendant's motion for summary judgment.

Exhibits 5, 6, 7, and 12: Having reviewed the entirety of Exhibits 5, 6, 7, and 12 the court finds nothing contained therein that is in fact "privileged or protectable as a trade secret or otherwise entitled to protection under the law." Civ. L.R. 79-5(a). Pursuant to the local rule, "[a] stipulation,

ORDER DENYING-IN-PART AND GRANTING-IN-PART PLAINTIFFS' ADMINISTRATIVE MOTION TO FILE UNDER SEAL PORTIONS OF PLAINTIFFS' OPPOSITION AND EXHIBITS IN SUPPORT OF OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—No. C-08-0133 RMW
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1 or a blanket protective order that allows a party to designate documents as sealable, will not suffice
 2 to allow the filing of documents under seal" for that reason alone. The court does not agree with
 3 SenoRx, *see* Dkt. No. 534, that Dr. Arthur's deposition testimony, expert report, or supplemental
 4 expert report contain any confidential business information. Further, the court disagrees with
 5 SenoRx, *see* Dkt. No. 534, that the excerpt from the deposition of Padraic O'Brien, which pertains
 6 primarily to secondary considerations of non-obviousness, particularly long felt need in the industry,
 7 contains any confidential or proprietary information. Accordingly, the court **DENIES plaintiffs'**
 8 **sealing motion with respect to Exhibits 5-7 and 12** to the Declaration of Maulik Shah in support
 9 of plaintiffs' opposition, with leave to re-file if any particular lines of these exhibits contain trade
 10 secrets or otherwise privileged or legally protectable information.

11 **Exhibit 9:** Having reviewed the designated portions of Exhibit 9 the court finds nothing
 12 contained therein that is in fact "privileged or protectable as a trade secret or otherwise entitled to
 13 protection under the law." Civ. L.R. 79-5(a). Pursuant to the local rule, "[a] stipulation, or a blanket
 14 protective order that allows a party to designate documents as sealable, will not suffice to allow the
 15 filing of documents under seal" for that reason alone. The court does not agree with SenoRx, *see*
 16 Dkt. No. 534, that the designated portions of Dr. Beron's expert report contain any confidential
 17 business information.

18 Plaintiffs additionally designated paragraphs 56 and 57 of Exhibit 9 as "internal competitive
 19 information of Hologic." Again, the court disagrees that these paragraphs contain privileged or
 20 otherwise legally protectable information. These statements go toward demonstrating a "long-felt,
 21 but unmet need for the claimed invention," and the content thereof appears to be public information.
 22 *See, e.g.*, U.S. Patent 6,482,142 col.2 ll.44-53. Accordingly, the court **DENIES plaintiffs' sealing**
 23 **motion with respect to all designated portions of Exhibit 9**, with leave to re-file if the parties can
 24 identify why any of this information is, in fact, legally protectable.

25 **Exhibit 21:** Exhibit 21 is a written opinion from SenoRx's attorney to SenoRx, which is
 26 privileged attorney work product and thus sealable. Civ. L.R. 79-5(a). Accordingly, the court
 27 GRANTS plaintiffs' motion to seal Exhibit 21.

United States District Court
For the Northern District of California

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DATED: February 7, 2013


RONALD M. WHYTE
United States District Judge